

BOARD OF ZONING APPEALS

Minutes

February 27, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on February 27, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, JAMES B SKELTON, FLOYD PITTS, BRADLEY TIDEMANN, and MARY DE SENA. The following Board member were absent: RANDY PHILLIPS and JAMES RUANE.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, Recording Secretary, ROSE M. SIMMERING

Also present SHARON DICKGRAFE -- Assistant City Attorney.

Absent: J.R.COX -- Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

PITTS: It is now 1:35 p.m. and we will call the Board of Zoning Appeals to order. We do have one more member that is coming in but she probably will be here by the time we can get through this first Item. Mary is arriving now, Thank you Mary. Has everyone had an opportunity to read the minutes of January 23, 2001? Maybe we left out one item calling of the role. Will the secretary do this for us now?

SIMMERING: Completes role call.

PITTS: Now we will go to Item one, meeting minutes for January 23, 2001.

ROGER moves PITTS seconds to accept the minutes of January 23, 2001.

MOTION carries 5-0.

PITTS: Item 2, review and approve annual report for BZA activities for the year 2000. Do we want to do that now or move that to the bottom of the list? Or is it important to do that now? What do you think?

KNEBEL: You can do it either way you want. It shouldn't take a minute to go through it unless there are questions. Every year Boards that are appointed by City Council are required to submit an annual report and this is the report that we have prepared on behalf of the Board of Zoning Appeals. Sharon did note that there is one correction that is needed in Section IV. It states that there were no suits filed against the Board in 2000 and Sharon did point out that there was actually one suit filed in 2000 and that it was later dropped. We will need to

make that correction.

PITTS: One suit was filed and then later dropped?

KNEBEL: Correct.

PITTS: So that is in the second paragraph of Section IV?

KNEBEL: Yes. We can make that correction to the text. I did not know if others had anything that they noticed.

PITTS: With that one correction we do need to have a motion of approval of this.

ROGERS moves SKELTON seconds to approve the annual report for BZA activities for the year 2000.

MOTION carries 5-0.

PITTS: Item 3, BZA 2001-0001.

KNEBEL: Okay, the first variance request on your Agenda is for a reduction of the side yard setback. The applicant had received a building permit to construct a carport to be attached to the north side of his residence at 813 N. Volutsia. That building permit was issued based on a site plan that the applicant had submitted indicating that the carport would conform within the required 6-foot side yard setback. At the time Office of Central Inspection visited the site they discovered that the carport had been constructed within that side yard setback. In fact the support posts for the carport are located on the north property line of the applicants property with the eaves overhanging the abutting property to the north.

The applicant has requested this variance to allow, and this is the site plan here that the applicant has submitted with their request. Again, the site plan the applicant has submitted does not indicate that the carport would be on the property line, which is the way that it is constructed today. It is essentially asking for and it is difficult to tell from the site plan but approximately a 2-foot reduction in the side yard setback, however, that does not conform to what is actually constructed which you can see here. It is a little difficult to see with the shadows but the property line is here. There is a fence that these eaves, I don't know if you can see right in here, but there is one board for the eave that overhangs approximately a foot or 18 inches onto the adjoining property and you can see that there is very little separation between the two structures. The properties around the site really don't provide much guidance in this instance. They are mainly just single-family residences so I will return it to the picture of the site, which I think is the real item in question.

In reviewing the application against the criteria required for a variance. Planning staff finds that the property itself is not unique, it is a single-family residence on a 50-foot wide lot which is quite common in this portion of Wichita. In fact, this residence already has a garage located in the back which is the common method of providing covered parking for properties that are on narrower than suburban

style lots.

The adjacent property, planning staff feels would be adversely impacted since the structure that is constructed today does overhang onto their property. It is essentially, I don't know if it is unwanted or not, but it is a structure from an adjoining property on their property.

The hardship, the applicant has not indicated or provided any information indicating that there is a hardship. It is simply has applied for a variance based on the fact that the construction of this carport was done in a manner that does not conform to the Code.

We think that this request is against the public interest. We feel that the separation that is provided here between these two structures is insufficient.

Along with the spirit and intent, does not meet the spirit or intent of the setback requirements which is to provided sufficient separation for light and air circulation and for public safety purposes primarily for prevention of fires from going from one structure to another.

Based on these findings that the conditions necessary for the granting of a variance do not exist, planning staff recommends that this variance to allow reduction in the side yard setback be denied.

With that I will answer any questions.

PITTS: Do you know off hand what date that picture was taken?

KNEBEL: I would say that picture is probably a month old. Probably taken in mid to late January, maybe early February.

PITTS: Does the bench have any other questions for the staff? John Rogers?

ROGERS: No, Mr. Chairman, I do not have any questions.

PITTS: Thank you. Is there anyone in the audience to speak in favor to the granting of this variance? Is the applicant or the agent present to speak? You would have to approach the microphone, sir.

VINCENTE SOTO, APPLICANT: I do not speak English. I don't know my carport, the City of Wichita say ok, and I do to my property. I need, I don't know I don't speak English.

PITTS: May I ask you, have you done any work on that since that picture was taken or since you filed for the variance? The reason why I ask this question, I was by this morning, all of the rafters of the roof overhang into the property to the north right into the backyard. I am sure that it does not conform with your application.

SOTO: I don't speak English.

PITTS: Does anyone else have any questions for the applicant?

DICKGRAFE: We may want to defer this and see if we can find someone to speak Spanish to interpret for him in fairness to the applicant. So I don't know if we want to defer this and let Dale and I make some calls to the court and see if we can get someone up here to help him present his case.

Sir, if you want to have a seat we are going to take up the remainder of your case here in a few minutes. We are going to try and get someone up here to try and interpret for you that speaks Spanish.

SOTO: Thank you.

PITTS: You mean you think you can get somebody else today then?

MILLER: She is on her way right now.

PITTS: Concurrence with everyone, why don't we go ahead and start Item number 4, case number BZA2001-02.

MILLER: The interpreter is on her way down right now.

PITTS: We might as well wait a minute and then we won't have to put these back up.

DICKGRAFE: Do you want to inquire to whether there is anyone else other than the applicant in favor of the variance?

PITTS: Is there anyone else other than the applicant to speak in favor of the variance? I don't want to hear those in opposition before we finish with the applicant.

MILLER: While we are waiting, apparently, what Scott indicates is when he had his previous transaction Cesar Mendoza that is listed as the agent on the staff report was apparently present and was able to interpret and the time. I think Scott thought he would be here today as well so that is maybe part of what is going on here. Terri said she was coming right down.

Now, Kurt Schroeder is here if you have question about overhangs and what OCI permits or does not permit on the property line and that sort of thing if that is anything that you need to know prior to the applicant.

PITTS: Kurt, are you going to be with us for a minute or do you have to leave?

SCHROEDER: I will try to answer any questions, but I really was not up to speed on this particular case.

PITTS: If it is not going to be too long of a delay, I would really rather wait to get the applicants input.

MILLER: Hi Terri, come on in. Terri Dozal works in the Manager's Office and is one of the DAB officials. Terri what we got here is the gentlemen there that you just met has requested a variance for a side yard setback. In the photograph you can see there is a carport and that apparently extends into the side yard setback and it does not comply with the setback requirements. So he is asking for the Board to allow that to encroach. Part of the problem that we have with it is that it appears to be over the property line. The applicant had someone who was speaking English and helping him interpret what he needed to do when he filed the application. But, he did not bring that person with him today it became apparent he was not understanding the questions.

TERRI DOZAL- INTERPRETER: I will try.

PITTS: I think if you can come back over to the microphone it would probably be appropriate for both of you to be up there, please. Mr. Soto if you would just state your case where the interpreter could relay the information to us, I think you will be better served.

Discussion between interpreter and applicant, Interpreter responds: He is saying that at this time the construction has stopped. Is that correct that you have stopped the construction? Or somebody has stopped the construction?

SOTO: Correct.

INTERPRETER: The construction has stopped and that he will comply with whatever your wishes are so that he can continue. So what the problem is that it is on other property correct?

MILLER: Do you want me to respond to that Mr. Pitts?

PITTS: Please.

MILLER: There should a 6-foot side yard setback meaning that his overhang and the post that hold up this part here. (Dale is showing slide)...Should be six feet from his property line.

Discussion between interpreter and applicant, ongoing, Interpreter responds: He has seen other places that are similar to this and they have passed.

MILLER: They may or may not in this particular case he is not meeting that setback requirement so he has to come to the Board and ask for the variance. But, in our investigation it appears that the posts are either on the property line.

KNEBEL: Right, the posts are on the property line and the eaves overhang on the property line.

Interpreter - DOZAL: And that is the property line of the other residence?

MILLER: So we are recommending denial.

Discussion between interpreter and applicant, ongoing, Interpreter responds:
He said he can put it in 2 feet can he do that?

DE SENA: Isn't 6-feet required?

KNEBEL: The 6-feet is the requirement, the Board of Zoning Appeals would be allowed to reduce that if they made findings.

PITTS: He didn't ask to reduce it to anything less than zero?

KNEBEL: The site plan there doesn't have any dimensions on it but it does appear that based on the site plan were it to be constructed based on the site plan it would be approximate 2-foot setback from the property line to the carport so that you would be reducing the side yard setback from 6 feet to 2 feet. The best I can tell from what the request is.

DE SENA: Does anyone have an opinion about how that would function? Whether that would be effective? The 2-feet?

KNEBEL: I think the applicant is right, I think there are instances where we have reduced setbacks to allow carports in the setback. I think that if there is a 6-foot separation I think that is the minimum that we are looking for from staff's position between the carport and the structure on the adjoining property to the East. We are in the process of making some recommendations to change the Zoning Code and that 6-foot of separation between structures is what we are looking for as a minimum between those structures for safety purposes.

DICKGRAFE: He would also have to reduce the overhang by 2-feet.

KNEBEL: Right.

DICKGRAFE: They can't just move the poles in 2-feet.

KNEBEL: Right.

Discussion between interpreter and applicant, ongoing, Interpreter responds:
He said he would put like a for the water here he would bring that in 2 feet and bring this in 2 feet and then have the drainage.

PITTS: The rafters would not be overhanging onto the adjoining property right?

Discussion between interpreter and applicant, ongoing, Interpreter responds:
Yes, if he can have the permit to do that, that is what he wants to do.

PITTS: Does anyone else from the bench have questions for the applicant?

DE SENA: My questions would be how do you negotiate? Do you deny this particular variance and then negotiate something else? I am not sure how we proceed from here?

KNEBEL: I think the Board can make a recommendation for a reduced setback it doesn't have to be approved what is constructed or denied that was just the recommendation of staff that under the impression that the applicant was intending to leave this constructed the way it is today and was seeking a variance to allow that. If the applicant is willing to reconstruct the carport so that you are only reducing the setback by 4-feet that would change our position on it. I think that would be even more reasonable than what is in place today.

PITTS: So we could work on the assumption that he is asking for, he is actually asking for a 2-foot setback?

MILLER: Correct.

PITTS: Is there any other questions for the applicant? Thank you, very much. The interpreter may want to stick around for a minute because we may need to call you back.

Interpreter- Okay.

SCHROEDER: I just have a question for the point of clarification; he said that he would move the post back 2 foot from the other yard, I think?

KNEBEL: Right.

SCHROEDER: Scott, you are saying a few inches or 6 inches into the other property?

KNEBEL: Well from talking to the Inspector in your office saying that the posts themselves are on the property line and the eaves overhang on the property line. From what I understand the applicant is saying that he would set up a design that would eliminate the eaves and just have I guess just a guttering system instead.

PITTS: And the posts would be two feet from the property line? Is what the basis is that we are continuing on? Is there any other person in the audience to speak in favor of granting the variance? Is there anyone in the audience opposed to the granting of the variance? Does anyone else have any additional questions from staff? We will bring the discussions to the bench.

SKELTON: Mr. Chairman, it appears that if you are going to move the posts over two feet it would be in the middle of the driveway. Can somebody address that?

PITTS: I wonder if a car can get through there?

SKELTON: I just want to make sure that it is a feasible design. It just doesn't seem like it would work if he did that. I don't know if there is anybody that can speak to that.

DE SENA: It is very hard to see.

SKELTON: It is.

PITTS: I wonder if you would have room to drive your car through if you even wanted to.

DE SENA: The question is, is the concrete on the property line?

SKELTON: Well the questions is...

DE SENA: Or so close to the property line that there is no way to move those posts that would bring it in 2-feet? Is there anyway that anyone can tell us whether you know that? Is the driveway on the property line?

KNEBEL: No. It appears that it is quite close. I don't know without having a better picture or without visiting the site whether there is 2-feet there to move those post in without having to remove concrete or not.

PITTS: There is a fence running parallel to that post that is up and it appears that it is right in line with it provided the fence is on the property line, we don't really know whether the fence itself is encroaching? Are we prepared to further discuss this?

SKELTON: My hesitation to approve this variance would be that I don't know what the end result is going to be. It appears to me that if you were to move the post over at all they would be setting in the drive-way and if they were to be putting in the middle of the drive-way then you know you are not going to be able to get a car through so without further information in a drawing or something I don't think I can support this variance.

DE SENA: That would be my problem as well.

MILLER: Do you want to defer it then and see if we can get some better dimension on where the width of the driveway is? Scott thinks it is approximately 13 feet wide. The carport portion but we are not sure how wide the driveway is relatively to the property line.

DE SENA: I think we need more specifics.

MILLER: Unless the applicant would happen to know those dimensions if you wanted to hear them from him if he knew them. What we would have to do is, can an Inspector do those measurements Kurt?

SCHROEDER: Yes, if they can find the property line. It is not always easy to do.

DE SENA: That sounds better to me. To have somebody who, an Inspector could say this could be done this would met the requirement and that it would satisfy the applicant and then we would feel that it was resolved.

MILLER: I am questioning is whether we could actually find a property pin, to know where to measure from. The only thing I would know is that you would just have to assume that the fence is on the property line. I don't know.

PITTS: In the absence of a survey I think that would probably be difficult.

DICKGRAFE: You can have somebody go out and measure how wide that cement driveway is and if you moved your posts 2-feet over you would have 6-feet or something which you are not going to be able to get a truck through it I think is what the Board is asking.

MILLER: We could do that clearly.

PITTS: Does the applicant have to ask for a deferment?

TIDEMANN: I would move that we defer until I can see some specific information.

MILLER: We probably ought to make sure that he understand and is willing to comply. I think he could say that he does not want a deferral and that he wants an answer.

PITTS: If he doesn't want a deferral we don't want to force him.

DICKGRAFE: Terri, can you let him know that he has essentially two options. He can have the Board vote today. Or the Board is asking him to defer this a month so that they can get more information on feet and where the poles would go and whether or not this is either workable.

DOZAL: Okay, and then you would have the Inspector go out and measure?

Discussion between interpreter and applicant, ongoing, Interpreter responds: He is willing to wait and to defer it.

PITTS: Without objection can we go ahead and defer this until the next meeting?

DICKGRAFE: I would think that you would want a motion and a vote just so the record is clear.

Discussion between interpreter and applicant, ongoing, Interpreter responds: All he wants to know is to be made aware to when the Inspector is going to be there so that he can also be there at that time.

MILLER: Just tell him that Scott has tried to call him several times and has not been unable to get anybody to answer the phone so somebody would need to be around the phone or to be able to reply to a message at some point.

ROGERS moves TIDEMANN seconds, to defer the case until the next meeting.

MOTION carries 5-0.

PITTS: Okay, I think we are ready for Item #2, BZA2001-00002. Thank you, Terri for helping and interpreting for the applicant and the Board.

KNEBEL: The next item on the Agenda is a request for a couple of variances pertaining to the Sign Code. The City Sign Code in the "LC" Limited Commercial district, which, the subject property is in, permits building signs as long as there are no more than three building signs per business on a single building elevation. And as long as that building elevation fronts a street or a paved parking area with a depth of at least 150 feet or more.

In this instance the applicant, is a Wal-Mart Super Center under construction at 21st Street North and west of Maize Road has requested signage that does not conform to those two regulations within the Sign Code.

Number One, the applicant is seeking more than three building signs per building elevation. They are actually seeking to put signs on a couple of different building elevations more than three on each. In addition to that there is one area that they are seeking to put building signs that does not have or does not front onto a paved parking area that is at least 150 feet in depth. The applicant has submitted a letter that indicates the reasoning behind their request for the signage.

I will go through the slides here. These are the signs that the applicant is requesting. Of course, I think this is probably the most important one that they are seeking is the one that identifies the name of their business. In addition to that they have some signage that identifies some trademarks or some slogans that they identify with their operation through their advertising such as "We Sell for Less".

They are also seeking numerous signs which identify the types of products and services that are offered at the store in this case on this particular elevation sign identifying the types of food items they have for sell. Again, here is another sign where they have "Always" which is one of their slogans, "Always Low Prices" which they are attempting and asking for a sign to be placed for that. Again, the "Always" with the sign denoting the entrance to the Food Center which would be separate and apart from the other operations that they have.

They are seeking a sign for their tire, actually two signs for their Tire and Lube Express, one on this elevation and one on another elevation I will show you in a minute. Again, some signs identifying services that are provided. This particular signage here on this elevation would front a paved parking area that is significantly less than 150 feet in depth. I did not measure that depth but it is probably more along the lines of 75 feet in depth rather than 150 feet. This is shown on the site plan that is attached to your report. I identified the Tire and Lube Express area, which is on the southern side of the building. This is actually signage on the other side of the Tire and Lube Express area and these are just signs to identify the entry bays.

PITTS: Excuse me Scott, back up just a second. What direction am I looking at right now?

KNEBEL: This particular slide is facing to the west all of the other signage was facing to the east facing onto Maize Road.

PITTS: The auto signs and the one slide previous to this facing to the east?

KNEBEL: Right, that was facing to the east. If you look at the site plan, which I guess is not in the slides here, but is attached to your report there is a area to the southern end of the building facing to the east which says "Tire Lube Express" this would be on the eastern frontage of that and then this would be on the western frontage basically facing to the back of the building.

This is the site and these pictures are not going to be too helpful since the building is under construction and there is not really much to see. That looking to the north that I just past this area out in here is currently under development as the Newmarket Square Shopping Center some of you have probably seen articles on that as far as the types of commercial business that will be going in there. Across to the east behind all of these building materials is a shopping center that contains Dillons, and a few other businesses. To the south you have some other commercial businesses some self-storage business and developing commercial area. To the west you can see some Single-Family housing and then back I think behind this pile of construction material there is a church that is located to the west behind the Wal-Mart.

In reviewing whether or not these requests for variances met the criteria necessary for the granting of a variances planning staff has found as far as the uniqueness has found that the property in question is really not unique. It is a "big box" retail business that is similar to dozens of other "big box" retail businesses in the community that have all been required to conform to this existing sign code.

As far as the adjacent property, most of the adjacent property is commercial businesses, which again are subjected to the same regulations under the Sign Code as Wal-Mart. Granting a variance in this particular instance for this request could injure those adjacent properties as far as being at a competitive disadvantage based on having less visibility through signage.

As far as the hardship the planning staff finds that the hardship criteria really have not been met. Essentially the Wal-Mart is attempting to seek a variance for a sign design that has been undertaking as far as all of this signage. Especially signage such as, "We Sell for Less", "Always", and "Food Center". Planning staff is of the opinion that if that information is essential that it can be incorporated into the number of signs that are permitted on the building rather than adding additional signage to provide that.

As far as the public interest, we feel like again the slogans and trademarks that are requested will create an environment that is unsightly and cluttered as far as the signage is concerned and is against the spirit and the intent of the Sign Code which is to limit the number of signs to three per elevation per business and to require that those signs be on elevations that either face the street or face large parking areas.

Based on these we find that conditions necessary for granting a variance do not exist and therefore we recommend that the request be denied. If, however, after reviewing this and hearing from the applicant that the Board does find that the conditions for the granting of these variances do exist, we have listed a number of conditions that we think that, if the approval were to be provided, that it should be provided under page three of the staff report. I will not go through them specifically but they are provided for you if that is the direction that this turns. With that I will answer any questions.

PITTS: Thank you, Scott. Were you able to identify any of the other applicant's sites that had similar parking area depth restrictions?

KNEBEL: I am sorry I did not understand the questions.

PITTS: I guess this variance number one is being asked for because the depth of the parking area is less than 150 feet.

KNEBEL: Right, for this particular signage here on the screen.

PITTS: So that would not compare either favorably or unfavorably with the Super Center say at 29th and Rock Road because of that parking area restriction doesn't exist?

KNEBEL: Well the parking area restriction as far as the depth of the parking is a current requirement in the Code. As far as the signage on the Wal-Mart at 29th and Rock Road, I do know that they have these signs that say Lube Express, and so forth and those do face parking areas which from at least cursory examination don't appear to have a depth of 150 feet but as far as how those were permitted I do not know the answer to that question.

PITTS: Any other question for staff from the bench?

DE SENA: I am still new to this and I am trying to understand what is different from this and what Mr. Pitts said like the other Wal-Mart that are already in town?

KNEBEL: As far as the number of signs?

DE SENA: Yes, since I am not real familiar with them.

KNEBEL: Primarily the difference between the number of signs that are requested, you have got this signage here there is a Tire and Lube Express sign say on the Wal-Mart at 29th and Rock Road. However it is not a permanent sign, it appears to be a banner that has been affixed to the side of it that this type of signage. There is some of this or these service identification signs but the types of things that are not on there are things like "Always Low Prices" and so forth. They do have identification at the Food Center, it does have a sign that says "We Sell for Less" on it. I agree with you that the difference between the request here and what is permitted on some of the others is not real easy to distinguish. The primary difference is being the trademarks and the slogans in such large amounts of signage to advertise those.

DE SENA: Yes, are residential neighborhoods pretty close to this or you said it all commercial?

KNEBEL: They are all to the west, the only real signage that is visible from residential areas would be this signage here relatively small signs that are actually on the back of the building.

PITTS: Scott, can you briefly help me out on a banner sign? What are the prerequisites for having a banner sign?

KNEBEL: As far as basically what is permanently displayed as a banner sign on the Wal-Mart building on 29th and Rock Road is that what you are requesting?

PITTS: That plus any type of banner type of sign.

KNEBEL: I am not the best person to tell you exactly what is permitted in the Sign Code. Maybe Kurt could come up here and answer that question.

PITTS: Please.

KURT SCHROEDER- SUPERINTENDENT OF THE OFFICE OF CENTRAL INSPECTION: Back to your question about why Wal-Mart in certain location might have this without the 150 foot of spacing. That was really beginning to be enforced in about 1991 and 1992. So it would kind of that issue of the 150 foot minimum spacing or paved area between buildings and that kind of thing. Depending on when the Wal-Mart's put up that signage that could be different but that has been strictly enforced for about the past 8 to 9 years. There have been quite a few variances I think requests brought to this Board over that very issue over the last 7 or 8 years.

On the banners, technically they are only allowed as a temporary sign and you can get a permit to put up a temporary banner and it is suppose to be up no more than 30 days. I am not familiar with this particular one but they are suppose to be permitted with a expensive permit and then put up for 30 days maximum.

DE SENA: Would they be put up usually for some new building that would be a banner out to attract attention? It seem funny to just put a banner up for 30 days unless it would be a brand new facility and people need to get familiar with it.

SCHROEDER: Technically, in the Code they are for Grand Openings, Going out of Business types of sales but then also for national Holidays which ends up coming in just about every month of the year. During most months if there is a holiday you can put one up.

DE SENA: You can find a way to keep your sign up?

SCHROEDER: Will you are only suppose to keep them up 30 days at a time and bring them down after that. But then you could put another one up if you permitted it 30 days later if there is a Holiday or something.

PITTS: Thank you, Kurt. Do we have any additional questions from the bench for staff? Thank you, Scott. Is there anyone in the audience to speak in favor of granting the variance? Please approach the microphone and state your name.

MICHAEL SEMRICK WITH BOICE, RAIDL, RHEA ARCHITECTS, 6700 ANTICOH PLAZA SUITE 300 MERRIAM, KS 66204: We actually worked on the design of the building. First I will deal with variance number one for the signage for this that there is not 150 feet of paving in front of it. We feel that this façade is actually if you counted it would be part of the fronting façade and then it should include the entire parking area, which is going to be approximately 6-800 feet of paving area from the front of the store out to the right-of-way.

The signage in no way will oppose any undo hardship on anybody for it will only be viewed by those coming around the south side of the store heading west. Or for traffic heading west on 21st Street. It is purely used for informative...

TAPE CHANGE

That is why we are requesting a variance to allow for that signage with less than a 150 feet. Because you actually have about 75 feet between our seasonal box and the Tire Lube Express but it is actually on a front façade, which we feel is part of the front façade, which would include all 6-800 feet of paving area for the entire building.

PITTS: Help me out, before you continue, how can you conclude that is a part of a front façade?

SEMRICK: Well, because it is actually front facing. When you are calculating facades most of them they take fronts, sides and the rears, it is a façade facing the I believe that it would be the east. So is the façade with all the other signage that we are asking for as well.

PITTS: So that is facing east?

SEMRICK: Well, that is west. It is the one before this with several different signs. I think it is ...pause...it is on this sheet here, that you have in your packet. For variance number two there is a uniqueness we feel with this building regarding the size of the building structure in comparison to many others. Our store is about 204,000 square feet compared to any others that's quite a bit larger which gives us a front façade of about 16,000 square feet. Under the ordinance we would be allowed approximately 3200 square feet of signage. That is 20 percent of the front façade. All that we are asking for and it was stated incorrectly and I made a mistake, we are asking for 993 square feet of signage which is roughly about 6.2 percent of the whole façade. If you took that in comparison with other stores are allowed with their 20 percent of façade it is going to be relatively similar. Most of your grocery stores are 100 to 150 feet in length that whole area there is about 4500 square feet, you are going to get about 900 square feet of signage and that is approximately what we are asking to use. We have several types of businesses' that just happen to be under the one roof. We offer retail, automotive, vision center, hairstyling, the list goes on and on. Just various

different, if each one of these were permitted as a separate tenant, the amount of allowed signage would be far greater than what we feel we are asking for. It just happens to be under one roof under the Wal-Mart roof offering various different types of businesses. Not all Wal-Mart's are designed exactly alike so the reason why we put the signage out there is to me informative to the public to inform them of the services that are offered at this particular location.

As was noted in the report, only four of these signs will be visible from any residential area, which are these four signs here. There is actually going to be screening from what I understand along the back so really those won't even be visible to any residential areas most of the signage will be visible to only other commercial areas and people passing by. Our sign package is actually designed to be distributed over the façade to give the best overall appearance for the store we can.

This particular store is actually a couple of notches above what we offer on our prototype buildings. It has got pilasters. If you look at the one at 29th and Rock Road where the other Wal-Mart is located this one is going to be a lot better looking. It has a tan color scheme, it has pilasters to break up the middle walls. It is just a lot better looking. When you start stripping away the signage it actually gives you an appearance of just an empty "big box". We designed this and the sign package in accord with the building to give best overall appearance and it is spread out so that it is not all cluttered up and grouped together.

If we were able to group it all together we would have been able to get this approved without coming through a variance the way they measure the sign is in a box pattern. If we could have fit all these signs into a big box, including in that is three different signs we could have got much of the signage that way. But, we would rather spread it out to keep it from the cluttered look just to give a better overall appearance and so that is the reason why we are coming here to ask for a variances to allow for a greater number of signs. So that we can conveniently convey to the public what services we do offer at this location and to also give the best overall appearance that we can.

If you look at it from a proportional perspective, with the size of our stores, the size of other stores, and the signage on those stores compared to ours I would dare to say that we are probably going to be close to what they offer or less then the signage that they have on their facades and we just ask for the same opportunity to relay that to the public as they are. I will answer any questions you may have.

PITTS: Thank you, Mr. Semrick, any questions for Mr. Semrick?

ROGERS: I understand what you are asking for on the east and the west side of this, how about the south end?

SEMRICK: The south?

ROGERS: Yes, I want to make sure I understand is there any signs there?

SEMRICK: No, on the south end, which would be basically facing 21st?

ROGERS: That is exactly right.

SEMRICK: No, there is nothing, the only signage you would have is on the east side of that Tire Lube Express and the west side which would be the back here. But, there is nothing facing the south side of it.

ROGERS: Very good. One more question, I am sure it is in the report but I am assuming these are illuminated signs?

SEMRICK: The only sign that is illuminated is the Wal-Mart central sign the 5 foot Wal-Mart in the center, that is the only one that is illuminated and is internally illuminated and it is not illuminated so that it is very bright it is illuminated enough so that at night it is visible. It will not be like an outstanding beacon it is just very low illumination but that is the only sign that is illuminated.

DE SENA: So, this "Always" sign is not illuminated?

SEMRICK: No.

ROGERS: Is it illuminated externally where light shines on it?

SEMRICK: No, it is all internally lit.

ROGERS: Okay, how about these signs that appear on the screen now?

SEMRICK: No, the Wal-Mart is the only illuminated sign on the building.

ROGERS: Of any type?

SEMRICK: Yes.

ROGERS: Thank you.

PITTS: Any further questions for Mr. Semrick?

DE SENA: Could you just elaborate on what you said about making this more attractive than the typical Wal-Mart "big box"?

SEMRICK: I have a colored schematic to show you what this store will actually look like.

DE SENA: If you don't mind.

SEMRICK: If you remember the store on 29th and Rock Road is a gray, red and bluish color, the one we are offering here is more of a light tan with a blue, it gives it a better overall appearance. We have offered more architectural features than on a standard prototype you don't get the pilasters breaking up the walls on the corners, around the back and the sides also. We have offered more architecturally to this store to give it a better look.

DE SENA: So what you are saying is that it is a pretty huge store? But it is not going to look maybe like the typical “big box” that Wal-Mart has done?

SEMRICK: No, it is not your typical “big box” store but the signage is incorporated into the design and when you start stripping it off you just get a big empty wall setting out there.

PITTS: Thank you, very much. Is there anyone else in the audience to speak in favor of the variance? Is there anyone in the audience to speak in opposition to granting either variance or both variances? If not then we will restrict the discussion to the bench. I have heard it said that everything that is built on the eastside of Wichita that the west side tries to better it but I guess I didn’t believe it. Is there any further discussion from the bench?

SKELTON: I have a comment Mr. Chairmen, I cannot really find any reason that I feel why not to approve this variance. One concern would be to the effect of the signs on the competition. I think Wal-Mart has quite a bit of its own competitive advantage I think the size of the store outweighs the sign in that fact. But, one concern that I would have and I would like the Board to consider is are we going to set a precedent for the rest of the development that is coming into this area?

DE SENA: That is a very good question.

SKELTON: If we have a humongous store with tiny, tiny signs it might seem out of scale. But I don’t know if we are going to get hit with these requests from the rest of the people that are going to go into this development when it is finished. Then I think we would start in my opinion to compromise what our responsibility would be to the public here on this Board. So, those are my comments.

DE SENA: I concur with your statement because I feel like my instinct is that this looks reasonable given the size of the building, and given what they want to display. But, these recommendations would they help address any of what we are talking about? Maybe they wouldn’t, but would any of these conditions, conditional factors help if this were given to create some kind of a ...what we don’t want is a avalanche of a precedent that will just create and make it difficult for others or to deny others that maybe are not done as well. So I am just questioning how these conditions may help us in that regard.

KNEBEL: I don’t think that these conditions really assist in that regard at all. The intent behind the conditions that are listed here are to spell out the request in words so that it is clear if the Board chose to approve the request what the Board was approving. I don’t know that it provides any guidance as to future requests.

DE SENA: Could this request be tied to the size of this building being a partially, as he said square footage and the particular nature of telling people where to go for what? My concern is what his concern is and could we if it were given could we tie it to given the fact that this kind of a size and you know a smaller building you wouldn’t want to cram that many signs into.

TIDEMANN: I think the biggest thing is that we are staying below the 20 percent of the allow and we were at 6 percent you get a building 20,000 feet your façade is going to be greatly reduced and you are only going to have basically room for one sign or one or two signs. Because it wouldn't be worth it to put that many small signs on a façade that small because you can't see them. I think the 20 percent is the guideline we need to really look at because we are staying well below the 20 percent and we are in the 6 percent you go to a 20,000 foot building it makes no sense to add four or five small signs put one big sign and keep it below the 20 percent and you keep out of the problems that way.

DE SENA: You feel like that would be....

TIDEMANN: I think that because the signs aren't illuminated and I am a consumer as well and 205,000 square feet is a very big building and if you don't know where to go it makes it very difficult. I don't necessarily see a problem as the number of signs I think it is more for instructional use for the consumer to make it easier and I don't feel that it is cluttering. The signs are not too big and a lot of them, some of them are the "Always" but the optical shop here, tire store here, those aren't big signs it is more for instructional use and it is not used for advertising.

PITTS: Any further discussion?

TIDEMANN: I have a question what is the amount of signage allowed for an area of greater than 150 feet in between buildings? We are asking on the variance to allow building signs fronting onto a parking area with a depth of less than 150 feet what is allowed if it is greater than 150 feet?

SCHROEDER: If it is unlighted and no higher I believe than 12 feet it could be up to and they have at least 50 foot of paving I think it is 12 square foot.

PITTS: What was that again?

SCHROEDER: There is a second provision there on the limited commercial zoning, if you don't have the 150 foot you can go and if you have at least 50 feet and I don't know if this does I assume it maybe has the 50 foot of paving you could place a 12 foot square sign that is no higher than 12-foot that is not illuminated. It looks like most of those might met that 12-foot square foot condition on this elevation.

TIDEMANN: Is there a restriction on how many signs? If it still stays within the three per elevation?

SCHROEDER: It is still suppose to be three. The other thing I was mentioning to Sharon was that there is also something in the Code that talks about small directional signs for convenience of the public five square foot or less a couple of those might be five square foot or less. I am not sure, I mean like the tires, and whatever the other one there is. Maybe he would know but those would be allowed just by right.

TIDEMANN: What is allowable for a parking area greater than 150 feet? A paved area greater than 150 feet?

SCHROEDER: Basically then it is like having frontage.

TIDEMANN: Does that stay within the 20 percent of the façade area?

SCHROEDER: Yes, three signs.

TIDEMANN: Do we know how many feet this is to the paving?

SCHROEDER: Scott, I haven't been out there.

KNEBEL: Actually that particular side doesn't front paving area of less than 150 feet the other one does and I didn't bring my scale in here there is not dimensions on here on what that is. Essentially a couple of rows of parking and a drive isle which is typically at 75-foot range.

PITTS: In the recommendation from staff, in item two, the building sign shall be limited to a total of 1,245 square feet and I think I understood Mr. Semrick to say that and did I not and he may want to approach the microphone because the secretary is not here to keep minutes.

SEMRICK: Yes, that was a mistake we are asking for a total of 993 square feet.

PITTS: Thank you. Is there any other discussion or questions from the bench for anyone?

DE SENA: Would we be upholding the conditions then or are we assuming that we would uphold these conditions if we do grant a variance according to the recommendation or would we change that one 1,245 feet to whatever he...

TIDEMANN: I think we change the 1,245 square feet to the 993.

PITTS: Either that or 1,000 maybe. The chair will entertain a motion. I think we can move on motion on a variance on one and two simultaneously, may we not?

DICKGRAFE: That's fine.

ROGERS: Do we need to address the issue of how many signs we are just saying more than three.

DICKGRAFE: I think that is probably covered in the recommendation that say that the signs will be placed in substantial conformance with the site plan. I think the assumption would be that if we are approving the site plan and it has 10 signs that you are not approving 35 signs.

DE SENA: Okay.

ROGERS: Thank you.

DICKGRAFE: If the Board is wanting, to approve this you need to look at the five factors and whoever makes the motion because the factors stated in the staff report are to deny. I get the impression from the discussion that we are leaning the other way. So you may need to look at the five factors because the Board will need to have factual findings or at least verbiage for each of those to support the approval.

PITTS: You want to run that by just one more time?

DICKGRAFE: In order to approve the variance if that is going to be the motion you have to show that the five factors were met. The staff report that you have indicates that none of the five factors were met. So whoever makes the motion needs to rephrase and put in whatever facts they think support that this property is unique, that it will or will not have an affect on adjacent property, that it will or will not perform a hardship on Wal-Mart's public interest, spirit and intent. Generally we say we will adopt the recommendation in the staff report your going to approve it you can't do it this time. Not that I am trying to scare John from making a motion but.

SKELTON: Can we discuss, before we make a motion each criteria? Because I can ad-hoc-it and it wouldn't sound very good.

DE SENA: Yes, and plus in the adjacent issue I guess I haven't really plumed the depth of that about the competitors and so forth. Would you like to lead?

PITTS: But the adjacent property owner's...I guess notifications have been out that this was going to be heard?

KNEBEL: Yes, the property owners within 200 feet were notified.

PITTS: Yes, we would have to discuss the uniqueness.

SKELTON: Because I say the sheer size of the store would make the uniqueness.

PITTS: That is fine with me.

DE SENA: I think the two things that make it a little more unique is the size of the store and the fact that they have gone to some length to make it not in a "big box" style.

SKELTON: Size and design of the store.

DE SENA: So the design to lead you to different areas and the signage could be a part of the... appropriate signage could be a part of what you want to be desirable.

PITTS: I think that sounds good. So, adjacent property Mary did you get....

DE SENA: I am trying to understand this better.

TIDEMANN: Will one thing is that Single-Family on the backside to the west, it is not illuminated signs so I don't think that it affects any of the residential area.

SKELTON: The signs not illuminated.

DE SENA: So it is not a quality of neighborhood as much as the competitors.

TIDEMANN: Like Dillons is probably going to be the one to complain the most they are going to be direct competitor to Wal-Mart because it is a super store with groceries. I don't know if Dillons used their 20 percent of their façade or not. Wal-Mart can use a bigger sign on the front if they wanted to. I think our issue here is not necessarily the amount of signage but the number of signage and also the signs 150-feet of parking. Dillons is a grocery store, they sell groceries. Wal-Mart is a full service deal essentially and have a lot of different businesses. The sign that they are showing is not advertising signs and they are more instructional signs I don't see that it necessarily adversely affects say a Dillons. Now if they were going for over 20 percent of a façade on the front, I would think that but they are not and that is not the issue.

SKELTON: So you are saying that the absolute change is minimal.

TIDEMANN: Yes.

SKELTON: Can we use the terminology of a slight deviation or would that be not true? I think that is pretty much an opinionated statement.

DE SENA: One thing...

TIDEMANN: You could say they are not adversely affected because they are not going over their allotted use of the total area of signage.

ROGERS: Mr. Chairmen, after considerable thought, I agree with staff that and I at this point would vote to deny this request. I think what I finally concluded is that I have had my oil changed at Wal-Mart before and you know I am not the one that drove it into any certain stall because they do that. I mean if I can find the parking lot they can find my car. I don't know that as a consumer that it was important for me to know which stall did what. Dillons in my opinion is not very old and they had to go by the signage rules and codes. I live out in this area and I can't wait until this place opens, I am sure my wife can't either. But, at this point and for just that simple reason mainly regarding all of the signs at the Tire Lube Express that is my opinion.

DE SENA: So, can I ask you a question Mr. Rogers? We might be interpreting these signs on that part of Wal-Mart not necessarily for the consumer to find their way but as a partly an advertisement that they do all these things?

ROGERS: I understand what you are saying Mary, I feel like we would be setting a precedent here.

DE SENA: What I meant was, would that be an objection, I am mean would that be part of your objection that it sort of looks like it is a signage for direction but it is also mainly a sign for advertising and that maybe not necessary? Am I interpreting correctly?

ROGERS: I don't think that each one of those bays on either side of that, having the description of what they do it that bay is that important because we are not the ones as consumers that drive our vehicle in there. They don't allow us for obvious reasons.

TIDEMANN: It serves more to be a decorative standpoint than a functional.

ROGERS: I might ask staff if there weren't so many signs would we in this one area like on each side of this building would we have or would they have needed to come before us?

KNEBEL: Well, in this particular instance here, I think from what Kurt was saying, I think they could probably, they might have to redesign especially the Lube Express signs. Which I think are over the five square feet but in this particular area they probably could manage to get that in if they were all under five feet. Is that correct Kurt?

SCHROEDER: Yes.

DICKGRAFE: Or they could have three on that side anyway.

MILLER: Three is the maximum.

DICKGRAFE: Three, they just can't have four on this side.

DE SENA: They would be allowed three.

SCHROEDER: Is this the west elevation?

KNEBEL: Yes, this in particular one the west elevation.

DICKGRAFE: Yes, which does not have the 150 feet.

SCHROEDER: These are the only sign on it?

KNEBEL: Right, that is correct.

SCHROEDER: I think by the Sign Code their option could be to make this legal without any kind of variance is to make each one of those signs above each door five square foot or less. That would be legal, they wouldn't need a permit, they are unlighted problem.

DE SENA: How big are they on the plan?

KNEBEL: The Lube Express I think are the only ones that exceed that and they

are 8 square feet roughly. The others are between three and four square feet.

SCHROEDER: So that would be an alternative for them.

KNEBEL: As far as staff is concerned our primary concern was the slogans and trademark type advertising and the size of those signs that were included especially on the....

DE SENA: Could they be reduced and still be within the Code? Like "We Sell for Less" could that be reduced.

KNEBEL: Well the size of the sign is within the maximum allowable it is just the quantity of signs that they are proposing for the front exceeds the maximum of three.

TIDEMANN: Do we have a picture that shows the entire east elevation?

KNEBEL: I don't. But, I think maybe the applicant has one that he could pass around, but I don't have one.

Discussion around map with the applicant hard to understand what is being said everyone is talking at the same time.

SEMRICK: Like here you have bakery, deli meat, a vision center, or optical, one hour photo, pharmacy.

TIDEMANN: It almost looks like three separate buildings.

SEMRICK: We were going to be able to have a...to take a box like that and they were going to include that as one sign which I think there are other areas in town that have done that I think they calculated signs by box. That is one sign right there, however, it is under 400 square feet if you put signage. However, they include dead space from what I was told by code officials so that takes it over 400 square feet and that is the reason we had to come for a variance. Otherwise if we do that two signs, three signs, there is our three signs it would have been five but they include the dead space in there and that took us over 400 square feet for each sign. Otherwise we wouldn't have had to come for a variance if we compact them all we can reach the Code. We just want to make it look the best we can.

DE SENA: Yes, and sometimes that is the case. Sometimes the Code itself can cause and it is very difficult to make an individual thing fit.

SEMRICK: That is why we wanted to come to the Code. Because if you got this grouped in here with three little signs in this group, that is, we got all of the signs right there we want to spread out to give it a better look that is why we came for a variance and we had to come forward. This doesn't show the TLE Bay for that to.

SKELTON: So these are all drawn of course naturally to scale here all of these

signs.

SEMRICK: This is what it is going to look like.

Everyone is going back to sets now (chatter away from microphones).

PITTS: Are we going to need to...John are you satisfied then, or do we need to take these separate variances to allow the signs fronting onto a parking area with a depth of less than 150 feet; and to allow more than three building signs per building elevation? I guess my question is if you have problem with number two can we go ahead and vote on number one or do we have uneasiness satisfied for one and two? Does anyone feel like tackling the hardship criteria?

SKELTON: This is the law that we have to come up with a valid reason for these five criteria and obviously it is not that easy. There is the aspect of what is this going to do to the competition out there and that weights a lot to me it does it is fairness. This company here Wal-Mart is by far one of the most successful operations in the United States. So if we deny this variance we won't be setting a precedent and we know that we have protected the competition around there. I mean as far as the Sign Code is concerned. There is my comments on the other side of the fence. Personally is it a big deal to me, it is not a big deal, but there is the law here and how is it going to, were is the hardship going to come from on their perspective. How will it cause hardship. Maybe the applicant I would like ask him.

PITTS: Usually the applicant if they are going to refute staff's recommendations they give us a few guidelines to go by.

SEMRICK: The only thing I stated is that by the Code the other businesses there are allowed their 20 percent. To show what they offer, not every Wal-Mart is designed exactly alike. You have a Wal-Mart Super Center, you have got a Wal-Mart store you got a Wal-Mart neighborhood market and not every Super Center, which this will be has the exact same things offered. If we can't conveniently display that to the public then we are losing out on people going on down the road because they don't think we have it and that is the way they are informative signs because it let's them know.

SKELTON: Your opinion would be that the hardship you would have is that you don't feel that the current Sign Code allows you the adequate opportunity to advertise through signage?

SEMERICK: It allows adequate square footage, just the number of signs limits us. As I stated we would be able to if we bunched the together in a box, we could actually could box in three separate signs. We are just asking for an additional allowance and the number of signs so that we can put out a better looking building. But if we can't this yes we can't put those signs up and then we can't display what services we offer.

DE SENA: For that reason because if we deny the variance they will squeeze them in to me would just be uglier. I mean to me it would make sense to keep the

spirit and in a sense preserve the visual appearance and allow for that.

SKELTON: Because the store is so diverse and the products that it offers you feel that you have justified this through the number of signs that you have?

SEMRICK: Yes, if they were individually permitted, because it is basically you got X-amount of different services there. You know they would be allowed X-amount of signage and that would be far greater than what we are asking.

PITTS: Do we have the hardship satisfied?

DE SENA: May I ask to clarify that a little bit? Suppose this big area of this one big area of Wal-Mart, you are saying, suppose it was for example a mall individual stores within it would be allowed more signage?

SEMRICK: Each business maybe allowed X-amount, I don't know what the strip-mall signage is.

DE SENA: So the overall effect would be a lot more signage then what you are asking within your variance.

SEMRICK: That is our feeling of it yes.

PITTS: The Chair is going to have to ask for some direction here as to the thoughts of the Board. We are going through a lot of steps here to see if we can come up with meeting these five criteria for approval, but is it the opinion of the Board that we can do that?

ROGERS: After looking at Mr. Semrick's drawing, I will have to admit that is the most attractive Wal-Mart I have ever viewed. From my previous statement, I went back and read all five criteria that Sharon mentioned. Unfortunately, I still agree with staff I can't support, personally, that it meets all five criteria.

SKELTON: I do agree with that statement. It is by far the most attractive Wal-Mart I have seen on paper and I am excited to see it built. But, my personal feelings are not what is important here, I think the law has five facts here and I think that is what is important. I believe that of course I have to follow the law on this matter and I can't justify. I would like to and I have tried but I have tried but I can't do it not in my perspective.

PITTS: Any other comments from the bench.

TIDEMANN: I am all for signage and no clutter and a nice looking building. But, I agree the spirit and the intent is where I get hung up on as far as overruling. That it would be more personal reasons as far as what I like to see. But, I feel that in that area of 80 some odd acres of commercial development, I don't think this will be the last thing we will ever see of this deal.

I think Wal-Mart, and everybody knows Wal-Mart, and I think there is a way that they can design it. It might not be as attractive but that would be a personal

feeling but they could get that on the signage and unnecessarily have a hardship on themselves. I think what they are trying to do is make it look and appear to be non-cluttered and as attractive as possible, I agree with that. But, I think it comes done to personal reasons and opinions not necessarily facts on the signage.

PITTS: If we are not going to be able to justify or if we can not find the criteria necessary for approval then the Chair is open to a motion.

TIDEMANN: Here is a question I have for staff, is there anyway they can come back in and ask for a new variance as far as the number of signs on the back with making sure they are below the five square feet and making sure they can get four signs that are below the five square feet? Could they ask for that variance?

DICKGRAFE: They wouldn't even need a variance for that. Is that right Kurt?

SCHROEDER: Yes.

TIDEMANN: But, you can only have three signs though?

SCHROEDER: No, if they are under five square foot directional.

SEMRICK: May I comment?

PITTS: Yes.

SEMRICK: Those signs are 8 and 13 square foot they are not that close to five feet. So when you reduce them you are going to be talking about small signs like that. You have to figure your separation. Which you know you are taking apart our way of looking at that driving in you can't see it.

DE SENA: I still have mixed feelings. Because I know that many times as much as I have respected the Code, and want to keep the spirit of the Code, I know that many times when people try to do something worthy, as they have in an effort to get outside of the box. That because it doesn't conform to a pre-set standard that it is denied and what they could do in response to what we are denying could be worse. More detrimental to the neighborhood and that is my concern.

SIMMERING: I need to change to tape over, please hold your comments.

TIDEMANN: I have a question for Kurt Schroeder, when this new Sign Code, 1997 on the three signs has that always been like that or has it changed?

DICKGRAFE: The last version I have is 3 – 1996 so?

SCHROEDER: I think this particular section of the Code about the three signs in the "LC" has probably been in there since the 70's it has not really changed. I mentioned to you before we were enforcing it more strictly after about 1991, that 150-foot requirement.

TIDEMANN: Could you described to me when they say one sign, what would

constitute one sign on say on this drawing here? Would Wal-Mart Super Center be considered one sign?

SCHROEDER: Yes, and then the area say way to the end that says "Shopping for Less" in red, or something at one end, that would be boxed and that would be considered a sign. So you are looking at five or six signs across that front.

TIDEMANN: Basically for them to get Code on this, take basically off "Tire Lube Express", at the end and "We Sell for Less" at the end then you would have your three signs bunched and the big box

SCHROEDER: As long as any one sign did not exceed 400 square feet. That is another limitation. That was probably where they were running into problem when they stretch that way out you have to do it within the confines of any advertising in that box and that becomes more than 400 square feet.

SKELTON: Mr. Chairman I would like to make a motion.

PITTS: The Chair can entertain a motion.

SKELTON moves, I move that the Board accept the findings of fact set forth in the secretary's report and that all five conditions set out in 2.12.2590b as necessary for the granting of a variance have been found not to exist and that the variance be denied.

PITTS: Just for clarification are you including variance one and two?

SKELTON: Both variances.

PITTS: You have heard the motion do we have a second?

ROGERS: I second that Mr. Chairman.

MOTION FAILS 3-2.

DICKGRAFE: You have to have four votes to either grant or deny. You can ask for a motion the other way to approve it. I assume the vote would be the same if that is the case then it is deferred to the next meeting by our bi-laws.

PITTS: The necessary votes...

SKELTON: I could support this project if I could concur with five valid reasons for the approval of a variance. I think it has proven difficult to this Board at time this is my opinion on that. I find it difficult to really justify how this Corporation would incur a hardship by, a real true hardship, if we could justify all of them but that one that still isn't good enough. So, I am not saying that we could not find a valid reason for hardship I don't know if I agree with your reason respectfully sir, but that is my position. I don't think that it is not a big deal to me, to pass this variance but the law has a certain requirement here and I don't think that we can make it Mickey Mouse.

DE SENA: Just a point of information for me in your recommendations it says inasmuch as under spirit and intent. Inasmuch as “big box” retailers are located in the “LC” district. Would someone on staff clarify that a little bit for me.

KNEBEL: Light commercial is the zoning.

DE SENA: Give me more grounding there.

MILLER: You mean in terms of what “LC” Limited Commercial allows?

DE SENA: Yes.

MILLER: We have basically two main zoning districts that commercial activities occur, “LC” and “GC”. The “LC” Limited Commercial allows everything from a mom and pop grocery store up to a Wal-Mart in terms of the size it is just that it has severe limitations on how outside display and storage occurs. It is for example in the Limited Commercial district you can’t have car sales without a Conditional Use. But in the “GC” General Commercial you can have car sales outside as a permitted use. The only other two commercial districts that we have are the “CBD” Central Business District, which is pretty much confined to the center core and then there is a Neighborhood Retail district that was originally created in 1996 to kind of provide for neighborhood local serving type stuff.

DE SENA: Do you have an opinion about the unusual nature of this store being larger and there being more empty space on certain areas. I know what the staff recommended but considering that they could meet Code by bringing those signs together.

MILLER: I think that is what our point is, is that they could do all this without the variance and that is the whole point.

DE SENA: But, do you think that it would be an improvement over what they are asking to have them met Code or not in term of visual clutter and so forth? That is my question it seems like what they are asking for is actually going to improve the visual aspect of this but?

DICKGRAFE: I want to make one kind of factual point here. Is that the diagram that has been presented by the applicant’s today is different from the diagram that is in the report. The report has seven more additional signs on the front of this building, which this one does not.

DE SENA: So which is which?

DICKGRAFE: I guess whatever motion we make needs to be clearer as to what you are approving.

SEMRICK: That one I showed just visual. When I brought that up there these Bakery, Deli Meat, Produce, those signs were not shown but when we box them all together in one they still will be allowed that way. You go by the spirit and

intent of this is to eliminate potential hazards to motorists and pedestrians none of which we do not. Encourage signs, which by the location of the sign are harmonious to buildings and sites, which they occupy that is what we are trying to do. Eliminate excessive confusing sign displays to provide an opportunity to achieve reasonable balance between the need of the sign while improving and preserving visual qualities of the community. Our opinion we would rather do this and we thought we did met the spirit and intent of the Ordinance. That is why we are here asking for the variance to allow this if we box them in it is just going to be a few more signs that we are asking for to give a better overall appearance and then again we met the hardship and that is what we presented to you today.

PITTS: Is it necessary that we ask to see if there is any or does anyone want to make a motion for approval. It is not necessary that we do that so what happens it comes back in thirty days anyway?

DICKGRAFE: Yes, and I think that the Board can vote that based on the fact that we could not give an affirmative vote on the motion that was made that it can be deferred thirty days or that it has to be deferred thirty days by our by-laws. I think that might give the Board time to think about the five factors, and frankly it might give the applicant time to put something in writing as to why they believe the five factors are or are not met which as you can tell from this discussion I think it would be helpful for the Board one way or the other and then we can come back and look at it again.

TIDEMANN: I would ask and I don't know if this is possible but just so that we have a clear visualization as far as how it all lays out. Can we have exactly what it is going to look like? I don't know if that is possible? Because, I don't know if I would necessarily vote for having all the Bakery, Deli, Pharmacy, One Hour Photo, but I am more advantageous to the way this lays out here rather than the additional small signage. So if we could have something showing exactly how we can visualize what it is going to look like.

DE SENA: We need to be better able to visualize it.

DICKGRAFE: Because the Board, if we approve this the language is going to be one of the recommendations of staff that it is by the site plan. I think we should know which site plan are we talking about.

SEMRICK: Even if we took off this little signage we would still have to come in for a variance because you are still going more than three signs.

TIDEMANN: Right. But, what I am saying is that if you could show us exactly what it is going to look like with the little signs that way we could visualize it. For me I don't know if I would necessarily vote for all the Deli, Pharmacy, One Hour photo and all that.

SEMRICK: This is an old rendering that we had and I brought it today just to...

TIDEMANN: If you could do that it would be helpful.

PITTS: In order that we move...

TIDEMANN moves ROGERS seconds, that this case number BZA 2001-00002 be deferred for thirty days.

MOTION CARRIES 5-0.

PITTS: We have one other item on the Agenda, BZA2001-00003.

DICKGRAFE: Unlike the last case, this is an Appeal from an Interpretation actually I guess it was an adjustment that was made by Kurt. Unlike the last case, we don't have to worry about the five factors the Board would look at and the specific provisions in the Code and determine whether or not Mr. Schroeder's Interpretation or adjustment was reasonable. I have provided the Board a memorandum, which you all should have received that outlines the specific zoning requirements that are at issue. Who goes first I don't remember?

MILLER: I assume that you would want the applicant to explain why it is that they think that the decision of the Zoning Administrator was in error. So that you can get her side of it and then have the Zoning Administrator then responds why he thinks it was appropriate and then you could follow up with whatever questions you have. So I guess Mrs. Fullerton I think they are ready for you to explain your case.

APPLEANT: Before I start I have authorizations that need to be right to speak to these people because they have the same concerns I have on this.

DICKGRAFE: Why don't you give us all the exhibits first and then we will have you go back to the podium.

FULLERTON: I have ten pictures that I am going to talk about and this is one of the neighbors that just got her home broken into.

MILLER: I guess are we all clear...

PITTS: Please state your name and address for the record Mrs. Fullerton.

ELSIE FULLERTON, 1429 N. MT. CARMEL, WICHITA, KS 67203, PHONE NUMBER 943-4110.

PITTS: Do you want to tell us why you feel that the Superintendent was in error in making the administrative decision to not have the screening?

FULLERTON: Me and my neighbors that I have brought the names in feel like that this screening fence that they have is not enough of a fence for the area. I have an article that I would like to read that was in the last minutes, it is on page 14. "Mrs. Willard ask so is this a metal building?" **ANDERSON:** Yes it is what they call a pre-constructed building. It is prefab, pre-designed type building the outside paint is auburn red and it has a 25 year warranty from manufacturer which will match not the color of this but the color of the red brick building that sits in

the front. The roof on it is a gray type roof and it has a charcoal trim. WILLARAD: Is the new building that you propose to build will that be used exclusively by your company? ANDERSON: Yes, this is strictly for an expansion of our existing building it operates in the two buildings that are already there.

I would like to explain the pictures that you have. There was always until this building came there was always a fence that was located in front of their building, not this screening fence. It says and the number one picture is the one at the south end of the warehouse and the back of the Kennedy Tires on both sides is a fence at the end and a locked gate on the west side. The people on the west side have protection from any crime that might happen because they have it totally secured.

On the third and fourth picture that you have are the exits from the warehouse parking lot into our neighborhood also the exit from the back of the Kennedy Tire. Please notice the tire tracks in number four where cars go from one parking lot to the other.

The best access for getting out of these buildings parking is through the exit into our neighborhood. I have talked with two police officers that have told me, when the alarms go off in back of the area where the warehouse and Kennedy Tires is that they do respond to the calls through the Knights of Columbus parking lot. As this would be the way if being robbed they would come out because they would rather go into a neighborhood then in a main street. I asked if there would be any weapons involved in this and they said at any time that a police officer is in danger that they would use their weapons.

Number five picture the north end of the parking lot the open space you see leads into the back of our houses the new fence is a fence the old was already there. A fence around this lot would make it impossible to get in back of our houses. Number six is the gate that leads to the warehouse in the Kennedy Tires and is back off the main street. I was told that the only way anyone could get back in this area was to walk. So nobody would want to go back here to rob this. The gate is never locked.

Number seven picture is a For Lease sign to lease these office warehouse buildings. He was told that the building was only to expand their business and they would be the only one in them. It was for their use only. We don't know what will be back in this area.

Number eight and nine pictures the front of the building where we need a fence to keep any crime from these seven businesses.

Ten, the area between the two parking lots, this must be the landscape that they are required to have.

We have in our area we have 11 widows and widowers ages over 79 years old. I think that we need some kind of protection to protect these people that live in this area from any crime that might happen. The Knights of Columbus building or the Kennedy Tire gets robbed several times and the only access that they would have

if they robbed this is to come through the parking lot of Pioneer Cable through the parking lot of Knights of Columbus and into our neighborhood.

I think when we have people that are 80 years old, 79 and 80 years old that we need some protection. Now, I have showed you a letter from Mrs. Esstees and she could not come because of a heart problem. But she had her house, and this is the first time that we have had any crime in our area. Since this fence has been removed and that has been located there every since we have lived there. This house was broken into she went to the grocery store, when she came back someone was in her house and in the basement and when she went to make a phone call they ran out.

This is the type of thing that I think by not having this fence up that we are going to have in our area and I think that we should be protected. They have all this protection on the west side but we have nothing on the east side. It is wide open. We have between 75 and 100 people sometimes cars that come to the Knights of Columbus building. They made it a point of saying that this building was going to be the same color and everything and that it would blend in and that it would not be as noticeable to people that would be going by. But it is not the color that they said it does not blend in and they said that this was going to be for their use only and they have a sign, a For Lease sign if you will notice, I have a picture with a Lease sign on. These five warehouse buildings that are in back of their building are For Lease, we do not know what will be going in them.

Also, they said at this meeting that there would be nothing back there that anyone would want to rob. They have spent \$450,000 dollars for a building and they are saying that there is nothing that they have in this building that anyone would want to rob. I can't imagine anyone paying that much money to have something back in that area that nobody would want to steal.

So I just feel like that a fence keeping anyone from coming across that parking lot and into our area should be done. So I think for safety reasons that we need this.

PITTS: Thank you very much.

FULLERTON: Mr. Andersons attorney said that there would be no way that anyone could get back there except for walking that walking would be the only way they could get back in there. They have all of their parking lot that they can get through. The gate that he told everybody that sat at the last meeting is never locked. People can go through, go in back of that building, break in steal tires from Kennedy Tire.

The police officer told me that they do go back there and they take the tires and they throw them over across the fence and then they leave from there. But, the police have even as I said and the police said that this is where they respond. Anytime this alarm goes off or any activity goes on that they will respond to the Knights of Columbus building. If we had a fence up there, there would be no way that anyone could get through that entire neighborhood. They would have to go to the main street, which would be 13th Street. So I think to keep this out that we need a little better fence and that we need this fence to keep us protected. There

will be seven businesses back there in that alleyway off of the main street.

PITTS: Does anyone have any questions for Mrs. Fullerton? Or should we listen to Kurt's response first?

DE SENA: I need to be brought to speed because I missed December and January of BZA and I don't know much about this case.

DICKGRAFE: This is the first time that this has come before the Board.

PITTS: We don't know anything about it either.

DICKGRAFE: I am assuming Mrs. Fullerton, the minutes that you were talking about reading was that from a District Advisory Board meeting? Or was that from the variance that this Board from a long time ago?

FULLERTON: This is what they promised him whenever they made this a commercial building.

DICKGRAFE: So that was actually a Planning Commission meeting minutes that you are reading from?

DE SENA: So could you give us background this is a commercial building that was put in a residential neighborhood?

KNEBEL: I can give you a little background on this case.

DE SENA: That would be helpful because I have no clue at all.

FULLERTON: There are five office warehouse buildings back in this area. It is fifteen feet from the beginning of the first home. The one where the alleyway is anyone can go in through that alleyway and back into our homes and everything.

DE SENA: You are basically asking for a fence that would cut their operation separated completely from your neighborhood.

FULLERTON: Yes, and we had always had one back there until this building was built back there. When this building was built back there they took the fence down and this is what they have waved.

DE SENA: So you would be asking for them to put it back. Put a fence around their operation? Rather than you putting a fence around your yard?

FULLERTON: Well, I have one around my yard. Their building faces the Knights of Columbus building. The Knights of Columbus has a screening fence out by the road. What we are wanting we want a fence around their property and around these five warehouses that are up For Lease and we don't have any idea what kind of buildings are going in there. What they said is that it was strictly for their business but it is not. It is for five office warehouses that have been built back there that they are leasing out to other people. I think that we need the

protection from them buildings and especially the Kennedy Tire. The only way that they have after that place is robbed is getting through this parking lot and our parking lot and a fence would eliminate this.

DE SENA: You are saying that the Police have told you that there have been problems with that and tires being stolen from that particular location?

FULLERTON: Yes. I talked to a Police Officer and they said that they do respond through the Knights of Columbus building when Kennedy Tire or any activity is going back on back there in that alleyway where are homes are.

DE SENA: Okay, Thanks.

PITTS: I think that we can be brought up to speed a little bit better, I believe and please tell me if you disagree if we were to hear Mr. Schroeder's reasoning for making the administrative adjustment to waive the screening requirements because that is what we are talking about is it not?

DICKGRAFE: Yes, Floyd I believe that Scott maybe has some pictures and photographs and kind of get us up to speed. Because I think in reference to this property, if my recollection is correct, this particular property was before this Board for a variance a long time ago, and it was before MAPC for a Conditional Use so it has some history here and then Kurt's decision regarding the screening or the fencing was actually the last decision that was made in reference to this property. So maybe if Mr. Knebel can have the podium and we can go through some pictures then if you have any comments that he shows you can certainly can making them again before the Board.

FULLERTON: See they had the fence waved because they didn't want to put a fence up there and I feel like it is very important to keep them. I am probably the third youngest person and there are probably only about two other people that are younger than myself on this street and we have 21 people that are in this area. I think that we need to protect them to make sure that people don't come through that parking lot and down into our homes and someone be killed and something like that just for the sake of a fence not being installed. I think that it is important that this fence be installed.

PITTS: Mrs. Fullerton, I just have one question before we continue. Now, you have got a substantial high fence that separates your property from the parking lot of the Knights of Columbus is that correct?

FULLERTON: Yes, I do have a fence.

PITTS: So entrance actually cannot be made to your property now and if a screening fence were to run up and down parallel to the dividing line that you have shown in some of your pictures, I don't see how that would prohibit anymore entrance but maybe I am wrong about that so let us listen to what Scott says please and we can come back to you.

KNEBEL: Just as a little background on this particular project, as Mrs. Fullerton mentioned for the owner of this property owns and had a building in this location here. The owner came to the Planning Commission and sought a zone change for this particular property here. He owns kind of a odd shape parcel like this that is mostly zoned Limited Commercial, this was zoned Single-Family the owner of the property requested and received Office Warehouse zoning so that a warehouse with, I believe Mrs. Fullerton is correct has five offices and five warehouses associated one with each office could be constructed in this location here. The property provides a screening fence where it is adjacent to residential property in these locations. This Single-Family zoned parcel here has developed with a parking lot to support the Knights of Columbus business which is here therefore it is considered an institutional use in Residential Zoning and this particular parking lot is as I will show you in the slides has a fence in this location here.

DE SENA: Is the green section or the red section the place where the warehouses are?

KNEBEL: It is on both. You can see from the aerial this is the existing business this aerial pre-dates the warehouse but the warehouse is in this location here. This is the parking lot you can see the fence in that location there. This is a site plan and I don't know that it is going to be that helpful to you. This is actually to the north and this is the warehouse building that I was referring to, this is the existing screening fence and then this is the fence in this area here is what Mrs. Fullerton has appealed.

This is looking from the Knights of Columbus parking lot at the warehouse building the applicant requested and received approval for a waiver of a screening fence that would run basically at the edge of that parking lot basically screening that property from the parking lot. This is the existing screening fence on the Knights of Columbus parking lot on the north end this is Mrs. Fullerton's house here. This is the screening fence on the east property line of the Knights of Columbus parking lot. That is the information that I have as far as the background.

SKELTON: Scott, can you go back to the picture that has Mrs. Fullerton's house? So, Mr. Chairman, were you talking about that fence there?

PITTS: Yes.

SKELTON: Now, does this fence stop right there at the trailers or does it go all the way down?

KNEBEL: I don't know if this is her fence of the Knights of Columbus fence but this fence does run east to west up until this point. There is a small gap in the fence between and I don't know that it shows in any of these pictures but there is a small gap between this parking lot and I will show you on this. You see how this line right here is a little bit further north than the other line there? There is a small gap in the fence right there, between this person's property and this parking lot.

SKELTON: Where does the gap go?

KNEBEL: There is a fence that runs east-west in this location here and a fence that runs east-west in this location here and it is not connected by a north-south segment.

SKELTON: So if somebody ran through that gap they could run into.....

KNEBEL: They would go into the backyard of this residence here.

SKELTON: Okay, now that is the one that is behind Mrs. Fullerton's house?

KNEBEL: That is correct. I quite frankly I didn't go back here to even see if there is a north-south fence beyond there.

DE SENA: Can someone explain what the rational behind not making them have a screening fence was?

DICKGRAFE: Mr. Schroeder will do that.

FULLERTON: If I could show you on the picture.

PITTS: Thank you, Scott, I still think that is appropriate for Mr. Schroeder to give us his reasoning.

KURT SCHROEDER SUPERINTENDENT OF THE OFFICE OF CENTRAL INSPECTION AND THE ZONING ADMINISTRATOR FOR THE CITY OF WICHITA: I am going to go through this again real quick maybe to answer your question on the layout. Again, like Scott said, this is the Knights of Columbus building area in here and this is there parking lot right here. They have a fence that goes along that north property line and then it comes all the way down here that screens them from Mt. Carmel Street that parking lot.

They used to also have this is the fence that you saw near Mrs. Fullerton's home across the back, they had a similar type fence that ran down through here that I think that the Knight's had at one time put up.

DE SENA: Are the Knights of Columbus still in operation at that location?

SCHROEDER: Yes they are. When Pioneer Cable developed they agreed and they put up a 8-foot higher screening fence that ran on their property right here on that north line then came all the way down here and up here so they have an 8-foot screening fence. Maybe, a little higher because it is also on a little retaining wall all the way around their property. This little gap and I am not very stable on this, but that little gap there of about 20 feet from the back of Mrs. Fullerton's property line to where this other fence was started by Pioneer's maybe 20 feet long. The Knights have about a 10 or 12-foot wood building setting right in that corner and there is a gap of about 8 or 10-foot there that is not screened or protected.

We have issued a notice to the Knights of Columbus about filling in that gap that is their property. The fence in question then was this older fence that came down between the parking lot of the Knights and between Pioneer Cable. That is the fence in question.

I just want to read a little bit here about screening out of the Zoning Code. What it says is that the purpose of screening and lighting it is all in one standard. The screening and lighting standards of this section are intended to protect residential districts from adverse visual, visual impacts associated with non-residential development. It goes on to say applicability screening shall be provided on all properties developed for all uses except single-family and duplex when such uses are established and property within or adjacent to or across the street from residential zoning districts except when separated by a major barrier. A major barrier would be a highway or river or something like that.

That is the intent is a visual screening. I know she has a lot of concerns about security but that is not what screening is about in the Zoning Code. The Zoning Code then allows us to myself with the concurrence or actually the Planning Director and then I have to concur in the decision to adjust certain rules and regulations of the minimum Zoning Code standards. One of which is we have an area where we can adjust screening standards which says that we are allowed to adjust which is the letter of December 14, 2000 that you have in your packet to adjust, reduce or waive the required screening specified in Section IV-B.3.(a) of the Code which is what I kind of just read to you.

It goes through a lot of things but it goes on to say or when the adjacent residential property is developed with an institutional or multi-family use and the location of improvements of one or both properties provides adequate screening. This is where we went to do our adjustment because that is key. Because this parking lot fence is kind of the issue that came down between this institutional use or this other kind of commercial type use it is next to Pioneer Cable that is what he would be screening from is that institutional use. It says that we can adjust that screening requirement provided that there is adequate screening on that next door use to protect the other residential parts of that neighborhood which there is. That was the 6-foot fence on the south line of her property and then it comes down Mt. Carmel there is that 6-foot fence.

Then that was kind of where Pioneer continued all the way around with about an 8 or 8 1/2-foot fence above grade, solid. We have issued a notice to the Knights to fill in this gap on their parking lot. That has really kind of developed if you look back in here I think it is a 16-foot easement back in there so it almost looks kind of like a old undeveloped alley with a lot of KG & E poles and other things in it. So we looked at those issues when we did the adjustment, it was signed by both myself and Marvin Krout and that is what the Zoning Code requires and we looked to that provision that says that we can waive a requirement if this kind of a use, Pioneer Cable is adjacent to an institutional use like this Knights of Columbus and their parking and this adjacent use already has screening to the neighborhood which it did. Except for now just little part of fence, which they are going to be fixing. So, that is where we were coming from and I was coming from when I signed that, we looked at screening standards. I do understand that

she has a lot of concerns about security and I am not sure what all they are but, that is not what our issue was it was screening, visual impacts on the neighborhood and we feel those are all met. I would be glad to answer any questions for you if I could.

SKELTON: So what you are saying is that the property has fence all the way around it on the west and north sides. However, your reason for having not to require that fence there is because there already is a fence and acts as screening to the Knight of Columbus own?

SCHROEDER: Yes, to the residential.

SKELTON: So I know the Code is not for security purposes but for visual screening purposes but you have told the Knights of Columbus to go ahead and fill that in per Code correct?

SCHROEDER: This little gap. Yes. That would be their requirement to make sure that is maintained.

ROGERS: How long does the Knights of Columbus have to complete that project?

SCHROEDER: I think the notice that went out gives them sometime to like the end of March or something to complete that the one that is out now.

DE SENA: I just wonder if she would feel if that would help solve her safety concerns.

SCHROEDER: The little gap?

FULLERTON: No, I think that the only time that we are going to have safety on this is if that fence goes in front of this building because they are going to have five buildings that are rented out to people. You will have all kinds of traffic back there and this is the only access that these people, if these buildings are robbed, the only access that they have will be going through this parking lot and through the two openings on each side of the Knights of Columbus parking lot and as you will look at the pictures..

DE SENA: I am sorry to interrupt you but what Kurt is telling us is that that gap would be filled in so they could not get out that way.

FULLERTON: Yes, they could get out. The fence that I am talking about is to go all in front of this building, if anything is like the Kennedy Tire that gets robbed all of the time if this is robbed they come through the Cable parking lot.

DE SENA: Can you help her show us that Kurt?

SCHROEDER: Maybe she can help me but I think this is the fence area that came down.

FULLERTON: I think on one of my pictures I have where I would like.

DE SENA: It is hard for us to put those pictures....

SCHROEDER: I think where you will see in the pictures there is like a 10 or 15 foot dirt area with some grass and some other things in it maybe some weeds. I think she said that these people now can just communicate between these things and they can leave here and go through here into the neighborhood through their gate.

DE SENA: But, I thought there was a fence on that corner. You said that there was a fence up by Mt. Carmel.

SCHROEDER: There is a fence but there are two drives there is one down in this area and one up in this area.

FULLERTON: There are two large drives on each side that lead directly from their parking lot and into the Knights of Columbus parking lot and into our area. The Police Officer that I was talking to said that this would be the way that if these places are robbed that they would come through this parking lot and into our area because they feel safer going into a neighborhood area than they would be to go out that one main street and be on the road. We have buildings all on 13th Street and this sits back off of the road and back where there used to be an alley way and it sits back off of the road and if they had a fence around this building, in front of this building they would have no way that they could get into our neighborhood. The only way that they would have of getting out of there would be to go through the front and onto the main street which is 13th Street.

We are trying to protect our neighborhood by asking that they put this fence up here so that we don't have worry about the robberies in or neighborhood. I think that the area that we live in with all the older people that we live in and Mrs. Esstees has lived in this area for 38 years and they always had a fence up there where we are wanting the fence. They always had a fence there but it was removed when the Cable Company took over, they removed that fence and that is the one that they don't want to replace. I think the fence would mean a lot of security for the neighborhood that we live in.

DE SENA: It seems out of our purview because it is not in Code as far as security goes.

SCHROEDER: I will let Sharon respond to that, but I am looking at the screening standards and that is why I read them to you. It is a visual impact only on the neighborhood and that is what I had to base my adjustment upon.

DICKGRAFE: The sole purpose of the Appeal is whether or not Kurt's Interpretation was correct based on the Zoning that is it. That is really all of the authority that this Board has. Mrs. Fullerton was able to bring this Appeal because under the Code requirement she is aggrieved by Kurt's decision because she is an adjacent property owner or at least there is language to the effect that would allow her that standing.

But, we don't look into the public interest, or the impact for the community those are not the factors, this whole decision is whether or not Kurt's Interpretation was correct and supported by the Code and the facts of this particular property. I also might note just for the record and I don't know whether the Board is going to tie up the discussion but the owner of the property is here and certainly would have the right to address the Board since he was the original person that asked for the zoning adjustment.

SKELTON: Sharon, in other words, if we agree maybe she has some security concerns is one thing however if we agree Kurt made the right decision the purpose of this Board is to determine what he thinks?

DICKGRAFE: Yes, whether his Interpretation was right or reasonable given the language of the Code.

SKELTON: Really within that context how are we supposed to evaluate her security concerns at all? Or would that be improper for us to do so?

DICKGRAFE: Given the nature of the Appeal, I am not sure that you can.

FULLERTON: It says on there....

TAPE CHANGE

DE SENA: So if Pioneer Cable owns it who owns the other side? Is it the parking lot of the?

SCHROEDER: This little white box right here? Pioneer Cable is on this green and this red and this little green over here.

DE SENA: If you put a fence down the middle...

SCHROEDER: That is parking lot that white block right there.

DE SENA: Is it for the Pioneer Cable?

SCHROEDER: No, it is for the Knights of Columbus.

DE SENA: So, there could be a fence, a fence could be put along the Knights of Columbus property line that would address your safety concern if it could be put there if you could find the money to put it there? What I am trying to get at is that you don't have to Appeal to the owner of that property to put a fence there do you? If you could get the money and the cooperation to put a fence there it wouldn't have to go through that Cable Company would it or am I wrong?

SCHROEDER: I think that this fence that was there when the Cable Company expanded it was the Knights fence, they had put that up and they took this down later after this developed.

DE SENA: Oh, the Knights took it down?

SCHROEDER: The Knights took down their older fence and now they are adjoining this office warehouse and Pioneer Cable so it was their old fence that was there originally and I think it came down 8 months or a year ago or something like that.

DE SENA: So it would be possible to put something there even if the Cable Company weren't involved? As long as it could be worked out?

SCHROEDER: Like I said the Knights had that fence and I think originally it belonged to them.

FULLERTON: In the minutes that we have it says that yes screening will be required it is possible to ask away the screening requirements and it can be done administratively along the line when you are adjacent an institutional like the Knights of Columbus. Mr. Osborne and Mr. Krout: I thought that he had asked for that, I am sorry, KROUT: No they are planning to fence the property meaning the Cable company had agreed to fence this property. The only one that they fenced was on the west side which leaves the east side with only this screening fence that has two big drives that they could get through we have all this traffic that goes back into the Knights of Columbus parking lot that this building is setting there.

It has lights around it and people just driving by, if I am working in my yard or something will come and want to know what this building is because there are a lot of curious people.

Number one, in the one picture that you see, you have people that are cutting through the Knights of Columbus building and going into the Pioneer Cable parking lot and I have seen them go around the building and I have seen them go there and go out through the front driveway so it isn't that they can't get from the one parking lot to the other and I just the letter that you have and we have already have had one break in just since this fence has been removed. Granted it might not be because of this but there is a possibility that there could be too. Because we have a lot of unwanted people in the neighborhood now and this building is they say that the Cable wires that they have are not something that anybody would want to steal but if somebody puts out \$450,000 dollars to build a buildings back there they do have something back there that people would like to steal and it is a building that they said was going to be used strictly by them it is not being used strictly by them we are going to have five different companies that are going to be back there in that parking lot. The fence that would be in front of their building separating them from the parking lot would be what we need for the safety of our neighborhood. I think that to me that this should not be a problem and that this fence should go up and it had been there for 38 years and now all of the sudden they move in and they take it down.

DE SENA: But, it sounds like it was the Knights of Columbus that took it down because it was their fence. So you really have to straighten out whose fence it is.

PITTS: I would like to ask Scott, what was the requirement, how was the requirement made that this screening exist?

KNEBEL: I guess. I am not understanding your questions. Which screening are you referring to?

PITTS: The screening on the basis of our conversation. The Zoning Administrator has waived the screening requirement?

KNEBEL: I thought you were referring to the existing screening and why it was put into place to begin with. The reason that the waiver was requested is that the zoning of the adjacent property is zoned single-family when you have single-family zoning adjacent to office warehouse and limited commercial zoning in this instance then you are required to provide a screening fence unless, as was the case in this instance, you request a waiver based on the fact that the single-family zoning is developed with an institutional use and provides the screening either in combination with the screening on the subject property or entirely on its own like in this case where it provides all the screening on the east side.

FULLERTON: I don't think that screening is adequate safety for us. There is not adequate safety with this screening fence does nothing for the safety of our neighborhood and that is my main concern right now. I just think that this fence in front of this building would protect our neighborhood and we wouldn't have anymore break-ins or anything like we have here.

You can see from the pictures that on the west side that they have a fence that goes all the way across the back goes all the way across the both sides and then they have a locked gate that comes across from Sheridan into this parking lot. So there is no way that anyone can get into the West side and everything has to come through the east side and the east side has no protection at all. There is no one that anyone can get into that parking lot through the west side. It would be just a matter of a fence and I think that is for safety reasons and everything and that is what I am trying to get up back there is a safety fence so that we don't have to worry.

I myself put a security system in my house and I put a garage door opener on it but there is a lot of people in the neighborhood that can't afford these kind of things and they have to hope that people like you will help them to get the protection that we need in our neighborhood.

PITTS: Okay, that answers my question.

SCHROEDER: I don't know if this will help. But, this is kind of the same thing that we were looking at in the zoning map. This is the Knights of Columbus building, this is Mt. Carmel, this is Sheridan Ave. over here, remember that odd shape lot that Pioneer has? That is right here. This is a little bit of an older aerial but now they have this longer building back here as well. So that is the building that you see between the Knights parking lot right here and that long building that she has pictures of runs up and down in here on Pioneer's lot. When Pioneer built this new addition and rezoned this they screened here, they came all the way

down here, here, and there was an existing fence all of the way around this parking lot of the Knights that they owned.

I can't tell you exactly when, but after Pioneer had been there a year or two with this new building this fence came down it was between the parking lot and Pioneer. I believe that was the Knights fence it matched their other fencing and it was their fence and they took it down for whatever reason. Subsequently, we gave Pioneer Cable a notice just as he will say because this is residential zoning this parking lot that serves the Knights is residential zoning because it says there has to be screening in between any residential zoning district. This fence came down we gave Pioneer Cable a notice they subsequently came in and said yes but there is an exception because this is institutional type use and has screening that would allow you to waive that.

DE SENA: So the visual purposes were satisfied.

SCHROEDER: Well, that is what we felt, you had this fence all of the here although, she is talking about a drive in through here, and there is another drive down in this area that I believe do not have any gates. This is her house and the fence all the way here and that little opening we talked about along what looks like an unfinished alley down here then everything else is screened 8 to 8 ½-foot tall so that is the issue and that is how it happened.

DE SENA: You have asked Knights of Columbus to close in that other gap up at the top? And they have say thirty days to do that?

SCHROEDER: Yes, they have been put on notice about that. Originally we had started with Pioneer Cable because the fence came down and most of that was all theirs and we told them you need a fence. I guess after all of this got worked out we realized that there was this little gap in there that the Knights have and it is really their responsibility so we are pursuing that. But, this is the main area that the fence came down in between the parking lot and Pioneer Cable.

FULLERTON: Where that gap is back there that would be the easement.

SCHROEDER: Yes, that is an easement there and I believe it is 16 foot wide and you can kind of walk through it. It is pretty much undeveloped and it almost looks like an undeveloped alley.

FULLERTON: It is in the back of our homes. Anyone back in that area could either go through there or could go through the parking lot. So it makes the backs of our homes insecure and it makes the front of our homes, it also makes our street unsafe. Both of these could be a safety reason.

PITTS: Thank you very much. Would the representative from Knight of Columbus having anything that they might want to add?

DICKGRAFE: This is Mr. Anderson who actually owns Pioneer Cable.

PITTS: I am sorry.

DICKGRAFE: I don't know if you are the owner of Pioneer Cable but you are here on behalf of Pioneer Cable.

TOM M. ANDERSON, I OWN ANDERSON PROPERTIES, LLC: Which owns the buildings and the grounds there. I also own Pioneer Cable, which occupies the front brick building and Pioneer Electronic Assembly, which occupies the back facility. I guess what I could say is that I have a picture or two that might have but Kurt has elaborated extensively on the fact that there is screening that goes all of the way around on some of that. The attorney for the Knights of Columbus has spoken with me several times since they took their fence down and in fact they asked me to put a fence up for them back when I had my fence and a couple of my friends helped me to build the fence out back. They liked it so well that they wanted us to do it. I declined a bid on it because I didn't want to put a fence up with a neighbor that might have a conflict over other things which is kind of what some of this has boiled down to. So I declined to do anything.

Less than 10 days ago Leon Kritter who is the attorney for I believe it is Family Homes is the actual name of Knights of Columbus and he had called wanting to know where the property line was so that they could establish a fence back there.

They have looked at expanding that parking lot to pave it and I know that this is not relevant but in terms of some of the safety questions and issues that have come up they have looked at and said that they have been in contact with the City to do that and they have also looked at what kind of fence that they would have to put up and where the property lines were. I said that they could find the pins because we are about 6 inches off of whatever that might be for the drainage way that runs along back there on the edge of our parking lot.

So basically you have two parking lots that come up together with about a 10-foot strip of grass, which is where the sewer line and the telephone poles are lined up on that. That particular area belongs to the Knights of Columbus and they have looked at trying to expand that someday.

I don't know what the picture is that she has of people driving across but the majority of the time the folks that drive across the lot back there are the people that goes to the receptions and the parties and the dances that they have at the Knights of Columbus on Friday, Saturday, nights. I have probably 7 vehicles that come and go from back there and that is the total extent of traffic that is actually at the back of the facility on this.

I can't speak for Kennedy Tire because they have stolen items from his lot for however many years that he has been there and it doesn't matter whether they come around back of ours or whether they throw them over the fence or whether they go through his building as they have done many times.

I can't lock the gates at the front because we have a fire hydrant, a private fire hydrant that we had installed for the purposes of protecting that building as well as part of the residences that is behind that so that the fire trucks do not have to make u-turns and so that they can get back there to the building and serve as

protection that way as well.

I will answer any questions.

PITTS: I don't know where we are going with this. Would the Board be in favor of taking a 5-minute recess?

SKELTON: I sure could use one, Sir.

PITTS: We will take a 5-minute recess and return at a 4:15 p.m.

4:15 p.m.

PITTS: We will call the Board of Zoning Appeals back to order. We have listened to Mr. Schroeder's reasoning for waiving the screening requirements. I think the thing that we are being to do, and correct me if I am wrong, is to determine is whether or not that we feel that Mr. Schroeder made a proper decision. Not that we are not being asked to determine if it was in his authority to make such a decision but if in fact that he did make such a decision. Am I right about that?

MILLER: I think what you are being asked is did he properly Interpret the Code and come to a decision that is defensible based on the language in that portion of the Code.

PITTS: Based on that clarification. Does the Board need any additional information or deliberation? I think the Chair can entertain a motion.

DICKGRAFE: For the convenience of the Board there is in the packet a motion to affirm as well as a motion to reverse the administrative adjustment and there is findings which are just drafts, you can use them, you can disregard them but that would be the form that you could use.

PITTS: I see them now.

ROGERS: I would like to make a motion but before I do I would like to express to Mrs. Fullerton that I understand your concerns about crime and traffic and progress if you will. I know moved out west three years ago thinking I was getting away from some of the things but I didn't, I have got more traffic where I live now. Crime probably isn't any different I wanted just to express to you that I understand all of your concerns that you put in your letter.

ROGERS moves SKELTON 2nds to affirm the decision made by the Zoning Administrator. I would like to incorporate the facts following item number 2 in the sample motion provided.

MOTION CARRIES 5-0.

MOTION TO AFFIRM THE ADMINISTRATIVE ADJUSTMENT
DECISION BY THE ZONING ADMINISTRATOR

HAVING CONSIDERED THE ENTIRE RECORD REGARDING THIS MATTER AND HAVING HEARD THE EVIDENCE AS PRESENTED TO THE BOARD HERE TODAY, I MOVE THAT THE BOARD MAKE THE FOLLOWING FINDINGS:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section 2.12.590 of the Code of the City of Wichita Kansas;
2. That the Board makes the following findings of fact:
[Set forth specific facts underlying the motion i.e.]
 - a) That the Zoning Administrator, pursuant to Article V, Sec. I-2(i) of the Wichita-Sedgwick County Zoning Code, had the authority to grant the administrative adjustment made on December 14, 2000.
 - b) That the requirements for granting an administrative adjustment, pursuant to Art. V-I-6 have been met.
- i) **Impact on Safety and Convenience of Vehicular and Pedestrian Circulation:** The elimination of screening requirements and compatibility setbacks would have no impact on safety and convenience of vehicular and pedestrian circulation in the vicinity of the property.
- ii) **Impact on existing uses in surrounding areas:** The existing screening fence on the abutting property to the east provides the required screening mandated by the Code. Providing additional screening on the property in question would be an unnecessary duplication.
- iii) **Compatibility with existing or permitted uses on abutting sites:** The abutting property to the east is developed with a parking lot, which is compatible with the uses on the subject property. Therefore, there is no need for a screening fence on the subject property. The abutting property to the east provides a screening fence that screens the subject property from residentially-developed properties to the north and east and provides compatibility among the uses in the area.
- iv) **Effect on public health, safety or welfare:** There will be no encroachment into public utility easements or right of way. There should not be a negative impact on the public health, safety or welfare nor will properties or improvements in the vicinity be materially injured.

c) The administrative adjustment made by Kurt Schroeder is supported by the language contained in Wichita-Sedgwick County Unified Zoning Code.

3. The Board further finds that the administrative adjustment of the Zoning Administrator as set forth in his letter of December 14, 2000 was reasonable and is supported by the evidence presented at this hearing.
4. The Board further finds that the appellant has not met her burden of proof to show that the administrative adjustment was in error.

THEREFORE, BASED UPON THE FOREGOING, I MOVE THAT THE ADMINISTRATIVE ADJUSTMENT OF THE ZONING ADMINISTRATOR HEREIN BE AFFIRMED.

PITTS: Any other business to come before the Board of Zoning Appeals? Report from Central Inspection regarding compliance with requirements of various cases. I see that J. R. Cox is not here.

MILLER: He said that he would do it next time.

MEETING ADJOURNED AT 4:20 p.m.